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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
  
Amendment of Section 90.631  
Of the Commission's Rules To  
Eliminate the Trunked System  
Five-Year Loading Requirement

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RM-8387

To: The Commission

**STATEMENT IN SUPPORT OF  
POWERSPECTRUM, INC.**

PowerSpectrum, Inc. ("PSI") pursuant to Section 1.405 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its Statement in Support of the Petition for Rule Making ("Petition") of the American Mobile Telecommunications Association ("AMTA") seeking initiation of a rule making proceeding to eliminate Section 90.631(b) of the Commission's rules which governs the "recapture" of channels above 800 MHz, based upon the licensee's failure to load the channels to the prescribed levels. <sup>1</sup>/

**I. INTRODUCTION**

PSI is a subsidiary of Geotek Industries, Inc. ("Geotek"), a U.S. public company which is involved in various segments of the telecommunications industry, both domestically and internationally. PSI has, among other activities, entered into a joint venture with RAFAEL, the technology development arm of the Department of Defense

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<sup>1</sup>/ RM 8387, submitted on November 29, 1993. Reference to the submission of this Petition was included on a Commission Public Notice of November 16, 1993.

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of the State of Israel. Through this joint venture, PSI has obtained exclusive worldwide rights to commercial use of RAFAEL'S advanced radio technologies. PSI is currently working toward commercial implementation of one of these technologies, frequency hopping multiple access ("FHMA"), in the United States.

In support of these technology development efforts, PSI has acquired many 900 MHz specialized mobile radio ("SMR") systems throughout the United States, either directly, through subsidiaries, or through exclusive option and management agreements. PSI has also obtained interests in 800 MHz systems in several discrete markets. PSI has obtained a waiver of the Commission's regulations which permits it to construct the 900 MHz channels for which it is licensed or for which it has management and option rights, over a multi-year period.<sup>2/</sup> PSI intends, therefore, to be one of the nation's leading providers of SMR services, with systems in over thirty of the top fifty markets.

AMTA's Petition requests elimination of Section 90.631(b) of the regulations, which provides for channel recapture for SMR systems that are not loaded to seventy (70) units per channel by the end of their initial five year license term. Under the provisions of those regulations, if at the end of five years, the trunked system is not loaded to the prescribed levels and all channels in the licensee's category are assigned in the system's geographic area, authorization for channels not loaded to one

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<sup>2/</sup> In the Matter of PowerSpectrum, Inc., DA 93-770, Released June 28, 1993.

hundred (100) mobiles per channel cancels automatically. As the association notes, the rule has been used to recover channels from systems that were not fully loaded so that the frequencies could be reassigned either to a new licensee or an existing licensee seeking additional channels. The Commission subsequently modified its rules so that the five year loading requirement would apply only for systems licensed before June 1, 1993.

The association argues that the best interests of the industry, the FCC and the public will be served by the immediate elimination of the requirement. Because it will be a major provider of SMR services, PSI has a significant interest in any Commission proceeding that affects the SMR industry. PSI is generally supportive of goals stated in the AMTA Petition. It believes that the AMTA request does not go far enough to eliminate the burden of the loading restrictions. It is therefore, pleased to have the opportunity to submit the following Statement in Support of the AMTA Petition.

## **II. STATEMENT**

AMTA states that elimination of the loading requirement would serve the public interest and would be consistent with the FCC's objectives. PSI agrees for several of the reasons cited by AMTA. The primary method by which the Commission can ensure that SMR spectrum is effectively employed is to adhere to its well established construction requirements. If stations are legitimately constructed in accordance with the terms of their authorization, the SMR entrepreneur is impelled to take the most

aggressive loading activity possible in order to realize a return on the investment of his construction costs.<sup>3/</sup> Once constructed, the system can be purchased by any other entity that believes it can more efficiently employ the spectrum. The SMR service, therefore, by its nature, allows marketplace forces to provide for the efficient use of the spectrum. No additional requirement, beyond construction, should be necessary to ensure that channels are fully employed.

Moreover, as AMTA expresses, the June 1, 1993 cutoff date is arbitrary . This division separates licensees who, by virtue of the date of their authorization, may lose some or all of their authorized channels, despite efforts to effectively employ the channel, from similarly situated licensees, whose authorizations were issued days later.

This division is similarly arbitrary with respect to any remaining distinctions between 800 MHz and 900 MHz licensees. Although the AMTA Petition purports to address 800 MHz and 900 MHz licensees, it does not specifically request elimination of the relevant provision of the regulations that governs 900 MHz loading requirements. While the Petition seeks elimination of Section 90.631(b), it does not request elimination of Section 90.631(i) of the rules. That provision of the regulations provides 900 MHz SMR operators with special relief from the rule that requires

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<sup>3/</sup> Conversely, if a station is not legitimately constructed, the Commission's rules provide two mechanisms for recapture of the channels and reassignment to another entity: a) the automatic cancellation of the authorization; or b) the use of the finder's preference program.

demonstration of loading at the initial license renewal benchmark. Section 90.631(i) states that if 900 MHz stations are loaded at the time of the five year license anniversary, they may be awarded a full five year renewal term. However, if they do not meet the loading criteria, they may avoid channel recapture and receive a special two year renewal term. At the end of that period, the Commission would either issue a five year renewal or take back unloaded channels, as appropriate.

Nevertheless, the same logic that dictates the elimination of loading requirements for 800 MHz systems would compel the elimination of the 900 MHz loading requirements. Once channels are constructed pursuant to the timeframe established in the regulations, the SMR operator has every incentive to load the station as aggressively as possible, or to sell the system to another entity that will. Accordingly, PSI requests that the Notice of Proposed Rule Making responsive to the AMTA Petition include the proposed elimination of Section 90.631(i) as well. Licensees that have received a two year renewal would simply receive a new, five year authorization at the end of their current license term.<sup>4/</sup>

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<sup>4/</sup> As the Commission is aware, and as noted above, PSI has received a waiver of the regulations that allow it several years to build out its proposed multi-location network employing FHMA technology. The waiver requires PSI to load its system within a specified time after the stations are constructed. PSI expects that once it complies with construction requirements imposed as a condition of the waiver, it will be exempt from those loading requirements if rule sections 90.631(b) and (i) are eliminated. It would be inconsistent to impose loading requirements on PSI owned and managed systems that meet the construction requirements  
(continued...)

Similarly, PSI submits that AMTA's Petition does not address in adequate fashion those provisions of the regulations that employ loading as a bar to the accumulation of additional channels in a market. The Petition notes that the relief requested is limited to the take back of trunked channels not considered to be fully loaded at the time of their five year loading deadline. The association continues to support the current loading requirements for system expansion and the acquisition of additional capacity within forty miles.<sup>5/</sup>

PSI recognizes that the accumulation of greater than the minimum number of licensed channels is under consideration in two pending rule making proceedings.<sup>6/</sup> In the proceeding addressing the licensing of enhanced mobile service providers ("EMSPs"), the FCC would, among other actions, permit the licensing of up to forty two (42) vacant 800 MHz SMR channels in a market. It would also, in the context of that proceeding, permit the reuse of current licensees' authorized channels throughout a wide geographic area without a demonstration of loading. Similarly, elements of the Commission's proposal concerning 900 MHz systems may permit the

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<sup>4/</sup>(...continued)

of the PSI waiver and waive those same requirements for stations that meet construction requirements specified in the rules.

<sup>5/</sup> The association would except from these loading requirements rural SMR systems, as stated in its pending Petition for Rule Making.

<sup>6/</sup> See Notice of Proposed Rule Making, PR Docket No. 93-144, FCC 93-257, 8 FCC Rcd \_\_\_\_ (1993); and First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993).

reuse of current licensees' channels throughout a broader geographic area than is now permitted, without demonstrating a specific loading level.

PSI's Comments in those two proceedings are a matter of record. To the extent that, in those proceedings, the Commission permits the accumulation of an appropriate number of channels without a requirement to demonstrate loading, it need not take action in this matter to address the recognized impediment to the pursuit of legitimate business plans. However, should the Commission fail to adequately address the issue in those proceedings, it should take the opportunity, in a proceeding responsive to the AMTA Petition, to review the loading rules as they apply to the accumulation of channels as well as to their recapture. As noted above, and by PSI and others in a variety of contexts, accumulation of channels, like their initial licensing, will not promote spectrum hoarding if licensees are required to construct their facilities in a specified period. Once constructed, licensees will be impelled to load their facilities, or ultimately to sell their systems to another entity that can.

### **III. CONCLUSIONS**

PSI supports AMTA's request to eliminate the loading requirements that still exist for the recapture of SMR channels. PSI asks that the requested rule making proceeding specifically eliminate the channel recapture provisions for 900 MHz systems as well. In addition, PSI asks that, to the extent it is not addressed prior to the adoption of a Notice of Proposed Rule Making

responsive to the AMTA Petition, the Commission consider the elimination or modification of its loading regulations that limit the number of unloaded systems that may be licensed to an entity in a market.

**WHEREFORE, THE PREMISES CONSIDERED, PowerSpectrum, Inc.** submits the foregoing statement, and asks that the FCC proceed with the adoption of a Notice of Proposed Rule Making consistent with the sentiments expressed herein.

Respectfully submitted,

**POWERSPECTRUM, INC.**

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Dated: December 16, 1993

**CERTIFICATE OF SERVICE**

I, Donna B. Fleming, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 16th day of December, 1993, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing to the following:

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